United Nations S/2002/482

Security Council

Distr.: General
25 April 2002
English
Original: Arabic

Letter dated 21 April 2002 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General

On instructions from my Government, I have the honour to transmit to you herewith a letter dated 11 April 2002 from Mr. Naji Sabri, Minister for Foreign Affairs of the Republic of Iraq. The Minister reaffirms the views Iraq has previously expressed with regard to the unlawful procedures followed by the United Nations Compensation Commission.

I should be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

(*Signed*) Mohammed A. **Aldouri**
Permanent Representative

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Annex to the letter dated 21 April 2002 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General

More than a decade has passed since, by its resolution 692 (1991) of 20 May 1991, the Security Council established the United Nations Compensation Commission as the body responsible for administering the regime of Iraqi compensation payments and the associated Fund. Over this period, the Commission has considered more than 2.5 million claims submitted by more than 96 countries and international organizations and has awarded compensation payments in excess of 35.9 billion dollars, of which a sum of more than 13.5 billion dollars has been paid to claimants.

In the past, the Government of Iraq has stated on numerous occasions that the Compensation Commission established by the Security Council does not comply with the international practices in effect or with the methods by which claims are settled among independent States, which are based on the principle of sovereign equality in accordance with the Charter of the United Nations and which ultimately reflect the consensual character of the relevant legal regime. The procedure that was adopted by the Security Council has no precedent in international law and it is at variance with the previous practices of the Security Council, which has itself abstained from intervening in such purely legal matters as compensation and has left its assessment to the parties involved or to the International Court of Justice, the judicial organ competent to consider such questions under the Organization's Charter.

The Charter of the United Nations contains no provision authorizing the Security Council or its subsidiary bodies to decide individual cases relating to compensation and leaves it to the States concerned to determine how to settle compensation claims, whether by negotiation or through judicial settlement, the international arbitral tribunals or joint commissions, in accordance with customary international practice.

In creating such a regime, which it devised without any just or fair legal basis, the Security Council cast serious doubt on its credibility and that of the Organization as a whole and on its responsibility for the maintenance of international peace and security. The annals of the Organization, of which Iraq is a founding Member, will without any doubt contain dark pages filled with condemnation and question marks at the creation of a regime that is iniquitous and unfair not only because it violates Iraq's rights but also because it negates the values of justice and fairness and distorts the principles and concepts of international law.

Iraq has on more than one occasion expressed strong reservations with regard to the mode of operation of the United Nations Compensation Commission and its procedural rules, which have not permitted Iraq to participate in the Commission's work or in the formulation of its rules and decisions and do not accord it the right to object to those decisions. Iraq's participation is basic to this entire process in its capacity as the party that has been required to pay the compensation. At a subsequent stage it was confronted with a fait accompli in having to deal with a mechanism and with procedures in whose elaboration it had no part and to which it had, indeed, many objections.

Under the Commission's procedures, Iraq is prevented from exercising its legitimate right to defend its prerogatives and interests when it is deliberately excluded from any detailed knowledge of the claims against it and when the funds necessary for its optimum legal and technical defence are unavailable owing to the economic embargo and the freezing of Iraqi assets. Its repeated requests to be allowed to pay for its defence against claims, whether from the legal or technical point of view, from the Iraqi assets held by the Compensation Fund are refused, while claimants are allowed to secure legal representation and technical expertise from the best known firms in the world for the preparation of their claims and have been granted the financial opportunity and the time to do this.

The international norms of legal procedure require the Commission, in implementing its claims procedures, to maintain transparency in the flow of documentation submitted to it so as to allow Iraq, and not only the claimants, to be informed of all the details those documents contain and thus enable Iraq to exercise its right to defend itself in accordance with the principle that all parties concerned are equal.

In raising the aforesaid matters, the Government of Iraq protests in the strongest terms against the unjust methods adopted by the Commission in its dealings with Iraq, given the ongoing embargo that has been maintained against the country for years past and has extended to its infrastructure in general and has affected in particular economic, social, cultural and health-related infrastructure. No sector of life has been safe from its adverse effects, while Iraq has been afflicted with the burdens of a compensation regime that lacks any element of justice or fairness and any basis in the principles of international law.

In this connection, the Government of Iraq reiterates all of its past demands with regard to the manner in which the United Nations Compensation Commission was established, the nature of its procedures and the basic rules and principles that it applies and the unfair decisions it adopts against Iraq and against its interests and rights. These decisions are to be regarded as null and void, given that they violate the relevant norms of international law. Iraq accordingly affirms its right to recover the funds that have been paid to claimants by the Commission, wrongfully and without due scrutiny. At the same time, it holds the States members of the Commission responsible for the plunder and mismanagement of the Iraqi assets held by the Compensation Fund.

(*Signed*) Naji **Sabri**
Minister for Foreign Affairs of the Republic of Iraq